



Australian Government

International Air Services Commission

DECISION

The Route: Japan
The Applicant: Virgin Australia International Airlines Pty Ltd
(Virgin Australia) (ABN 63 125 580 823)
Decision: [2023] IASC 212
Variation Of: [2019] IASC 119
Public Register File: IASC/APP/202362

The Commission varies Determination [2019] IASC 119 to permit the use of the capacity on the Japan (Tokyo Haneda) route for code sharing between Virgin Australia International Airlines Pty Ltd and Air Canada, and Virgin Australia International Airlines Pty Ltd and Qatar Airways, subject to certain conditions. The permission is valid for the duration of the Determination commencing from the date of issue of this decision.

1 The application

1.1 On 6 October 2023, Virgin Australia applied to the International Air Services Commission (the Commission) seeking to vary Determination [2019] IASC 119, to permit the utilisation of capacity for Air Canada and Qatar Airways to offer code share services, as marketing carriers, on Virgin Australia operated services on the Japan (Tokyo Haneda) route, under a free sale arrangement. Virgin Australia provided the Commission with copies of the code share agreements with Air Canada and Qatar Airways, on a confidential basis.

1.2 In its application, the airline stated that the proposed codes share services will provide increased customer choice and alternative routings for consumers between Australia and North America, the Middle East, Africa and Europe (v.v.), by enabling Air Canada and Qatar Airways to place their marketing codes on Virgin Australia operated services on the Cairns-Tokyo Haneda route.

1.3 The Determination allocates to Virgin Australia one daily frequency in each direction to operate passenger services on the Japan route to service Tokyo Haneda and permits the capacity to be used by Virgin Australia for the provision of code share services with All Nippon Airways (ANA), subject to certain conditions.

1.4 In accordance with section 22 of the *International Air Services Commission Act 1992* (the Act), the Commission published, on 9 October 2023, a notice inviting submissions about the application for variation. No submissions were received.

1.5 All non-confidential material supplied by the applicant is available on the Commission's website (www.iasc.gov.au).

2 Air services arrangements

2.1 Paragraph 7(2)(aa) of the Act provides that the Commission must not make a variation to an existing allocation of capacity contrary to any restrictions contained in a bilateral arrangement(s).

2.2 The Australia-Japan air services arrangements provide for unrestricted capacity to operate international air services on the route, except to or from Tokyo Haneda Airport. The air services arrangements provide for three return daily frequencies for the operation of passenger services between Australia and Tokyo Haneda Airport. Two daily frequencies may be used during daytime hours at Tokyo Haneda Airport, while one daily frequency may be used during the prescribed night-time period (between 2200 and 0655 hours). According to the Register of Available Capacity, there are no frequencies available for allocation for services to Tokyo Haneda.

2.3 Additionally, designated carriers of Australia may enter into code share services on the specified routes with a designated airline(s) of Australia, with a designated airline(s) of Japan or with an airline(s) of third countries, subject to approvals of the aeronautical authorities of both countries.

3 The Commission's consideration

3.1 Virgin Australia's application seeks to vary the Determination to include a condition of a kind referred to in paragraph 15(2)(e) of the Act. In view of this, the application is a transfer application as so defined in subsection 4(1) of the Act and has been assessed in accordance with section 25 of the Act.

3.2 Subsection 25(1) provides that the Commission must make a decision varying the Determination in a way that gives effect to the variation requested, subject to subsection 25(2). Subsection 25(2) states that the Commission must not make a decision varying the Determination in a way that varies, or has the effect of varying an allocation of capacity if the Commission is satisfied that the allocation, as so varied, would not be of benefit to the public.

3.3 Under section 26 of the Act, in assessing the benefit to the public of a variation of an allocation of capacity, the Commission is required to apply the criteria set out in any policy statement issued by the Minister under section 11 of the Act.

3.4 Under section 11 of the Act, the Minister made the International Air Services Commission Policy Statement 2018 (the Policy Statement) which came into effect on 28 March 2018. The Policy Statement sets out the criteria which the Commission is required to apply in assessing the benefit to the public of allocations of capacity.

3.5 Section 18 of the Policy Statement specifically deals with ‘transfer applications’ such as this one. It provides that, in assessing whether the variation requested would not be of benefit to the public for the purpose of subsection 25(2) of the Act, the Commission is to have regard to the ‘reasonable capability criterion’ set out in section 8 of the Policy Statement and may have regard to any of the additional criteria set out in section 9 that the Commission considers to be relevant. The Commission is also to have regard to the matters specified in paragraph 18(2)(b) of the Policy Statement to the extent that they are relevant to the variation under consideration.

3.6 ‘Reasonable capability criterion’ is defined in section 8 of the Policy Statement to mean the extent to which Australian carriers are reasonably capable of: a) obtaining the necessary approvals to operate on and service the route, and b) of using the capacity allocated under the Determination. The ‘additional criteria’ to which the Commission may have regard are set out in section 9 of the Policy Statement.

3.7 The Commission notes that Virgin Australia is an established Australian international carrier currently operating services on the Australia-Japan (Tokyo Haneda) route, and therefore finds that the airline is reasonably capable of obtaining the necessary regulatory approvals and of using the capacity allocated under the Determination.

3.8 The Commission notes that international air passenger and freight services in and out of Tokyo are operated from either Narita or Haneda airports.

3.9 The Australia-Japan route is serviced by a number of carriers offering own-operated and/or code share services. For the Northern Winter 2023-24 IATA scheduling season, Qantas is the largest airline on the route, operating up to 28 direct services per week between Australia and Japan (including Brisbane-Narita, Melbourne-Narita and Sydney-Haneda). Jetstar Airways Pty Limited operates up to 25 direct services per week between Australia and Japan (including Cairns-Kansai, Cairns-Narita, Brisbane-Narita and Brisbane-Kansai), and Virgin Australia operates daily services between Cairns and Haneda. ANA operates twice daily services between Haneda and Sydney and up to three services per week between Narita and Perth. Japan Airlines operates up to three services per week between Narita and Melbourne and daily services between Haneda and Sydney. Several third country airlines code share with these airlines¹.

3.10 The proposed code share arrangements would involve connections between Virgin Australia’s daily Cairns-Haneda flights and services operated to/from Haneda by Air Canada (14 services per week) and Qatar Airways (14 services per week), respectively.

3.11 Air Canada currently operates daily services on the Australia-Canada route from Vancouver to Brisbane and Sydney (v.v.), offering through services to eight points in Canada, and 13 points in the United States of America².

3.12 The Commission considers that the proposed arrangements between Virgin Australia and Air Canada will provide additional options and choice for consumers

¹ Data sourced from FlightConnections.com

² Data sourced from FlightConnections.com

travelling between Cairns and North America (v.v.) marketed through Air Canada's distribution channels.

3.13 Qatar Airways currently operates daily services between Doha and each of Sydney, Melbourne, Brisbane, Perth and Adelaide (v.v.).

3.14 The Commission considers that the proposed arrangements between Virgin Australia and Qatar Airways will provide additional options for travel between Cairns and points in the Middle East, Europe and Africa (v.v.) marketed via Qatar Airways' distribution channels.

3.15 Noting the range of services offered by a number of airlines between Australia and North America and Australia and the Middle East/Europe/Africa directly and via a range of midpoints, the Commission considers that the arrangements are unlikely to have a detrimental impact on competition.

3.16 The Commission notes that it has received no submissions opposing the variation sought in Virgin Australia's transfer application. This means that the variation sought by Virgin Australia has not been contested, and would not limit the ability of other carriers to utilise capacity on the route. There is nothing before the Commission to indicate that its assessment of benefit to the public for the purpose of subsection 25(2) of the Act would be assisted by having regard to the additional criteria in section 9 of the Policy Statement.

3.17 Having considered the criteria set out in section 18 of the Policy Statement, the Commission is satisfied that the allocation, as proposed to be varied permitting Air Canada and Qatar Airways, to code share, as marketing carriers, on flights operated by Virgin Australia on the Australia-Japan (Tokyo Haneda) route, would be of benefit to the public. The Commission considers that there is unlikely to be any lessening of public benefit through authorising the code sharing arrangements in relation to the Japan route. Therefore, in accordance with section 25 of the Act, the Commission must make a decision varying the Determination in a way that gives effect to the variation requested in the transfer application.

3.18 The Commission finds that the matters specified in paragraph 18(2)(b) of the Policy Statement are not relevant to the variation under consideration. The Commission does not have information to suggest that Virgin Australia's transfer application involves speculative activity. Virgin Australia is an established international carrier that currently holds multiple determinations and other regulatory approvals enabling the carrier to operate scheduled international air services on various routes, including the Australia-Japan route.

3.19 Subsection 15(1) of the Act empowers the Commission to include such terms and conditions in a determination as it thinks fit. Paragraph 15(2)(e) requires the inclusion of a condition stating the extent to which the carrier may use capacity allocated under a determination in joint services with another carrier.

3.20 The Commission has decided to add conditions permitting the use of the capacity for the provision of code share services between Virgin Australia and Air Canada, and

Virgin Australia and Qatar Airways, on the Japan route to service Tokyo Haneda. As required by section 23 of the Policy Statement, the Commission has included a condition requiring the airlines to take all reasonable steps to ensure that passengers are informed of the carrier that is actually operating the flights.

3.21 Nothing in this decision should be taken as indicating either approval or disapproval by the Australian Competition and Consumer Commission (ACCC). This decision is made without prejudicing, in any way, possible future consideration of code share operations by the ACCC.

4 Decision varying Determination [2019] IASC 119 which allocates capacity to Virgin Australia International Airlines Limited on the Japan route ([2023] IASC 212)

4.1 In accordance with section 25 of the Act, the Commission varies Determination [2017] IASC 131 which allocates capacity to Virgin Australia International Airlines Limited on the Japan route to service Tokyo Haneda, by:

adding the following conditions to the Determination:

- The capacity may be used by Virgin Australia International Airlines Limited to provide code share services with Air Canada in accordance with the code share agreement between Virgin Australia International Airlines Limited and Air Canada, made effective on 1 March 2023, and the air services arrangements between Australia and Japan.
- The capacity may be used by Virgin Australia International Airlines Limited to provide code share services with Qatar Airways in accordance with the code share agreement between Virgin Australia International Airlines Limited and Qatar Airways, made effective on 21 June 2022, as amended, and the air services arrangements between Australia and Japan.
- Virgin Australia International Airlines Limited must apply to the Commission for approval of any proposed variations to the code share agreement between Virgin Australia International Airlines Limited and Air Canada, and Virgin Australia International Airlines Limited and Qatar Airways, which would change the relevant commercial aspects of the structure of the agreements from a free sale code share arrangement to a blocked space, or if the airlines propose to add new sectors (city-pairs) on which the airlines will code share where Australian capacity will be used for services on that route.
- To the extent that the capacity is used to provide code share services on the route, the airlines must take all reasonable steps to ensure that passengers are informed, at the time of booking, of the carrier actually operating the flight. Nothing in this Determination exempts the airlines from complying with the Australian Consumer Law.

4.2 This decision comes into effect from the date of issue and is valid for the duration of Determination [2019] IASC 119.

Dated: 16 November 2023



Genevieve Butler
Chairperson



Jane McKeon
Commissioner